

BEFORE THE  
**Federal Communications Commission** RECEIVED

WASHINGTON, D.C. 20554

MAY 31 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Assessment and Collection of Charges )  
for FCC Proprietary Software Packages, )  
On-Line Communications Service Charges, ) WT Docket N. 95-69  
and Bidder's Information Packages in )  
Connection with Auctionable Services )

To: The Commission

**Comments of AirTouch Paging**

AirTouch Paging, by its attorneys, hereby respectfully submits its comments on the Notice of Proposed Rulemaking<sup>1/</sup> in the above-captioned proceeding which proposes various fees and charges in connection with auctionable services. The following is respectfully shown:

**I. Preliminary Statement**

1. AirTouch Paging ("AirTouch") is one of the largest providers of paging services in the country and has been a successful bidder in both the nationwide narrowband PCS and the regional narrowband PCS auctions. As a major participant in the Commercial Mobile Radio Services in which mutually-exclusive applications will be subject to auction for the indefinite future, AirTouch has a substantial interest in the level of the fees to be charged for auction-related services. And, as a prior user of remote bidding software and on-line services in the prior

<sup>1/</sup> FCC 95-202, released May 16, 1995.

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narrowband auctions, AirTouch has relevant experience regarding the services for which charges are proposed.

**II. A Single Application Fee is  
Preferable to Component Fees**

2. The Commission is proposing to charge separate fees for remote electronic filing, remote access to filed applications, remote bidding and the bidder's information packages that are to be made available to participants in future auctions. AirTouch submits that this approach is unduly complicated. The better approach would be for the Commission to seek and obtain authority to charge a filing fee for the FCC Form 175 application calculated to recoup for the Commission all of the costs associated with processing applications by auction, including the various components of the auction process for which the Commission now seeks to establish individual fees.

3. The Notice acknowledges the difficulty of precisely calculating the costs and expenses associated with the development of the various auction-related software and services for which fees are now being proposed.<sup>2/</sup> The difficulty is only enhanced when the Commission seeks to break fees down into multiple component parts. Instead, the Commission should adopt a single FCC Form 175 application fee that is estimated to recoup all expenses related to the auction process. This fee, like other application fees, could be periodically reviewed in light

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<sup>2/</sup> The Commission proposes to use a "market price" approach in lieu of a "full cost" approach due in part to the difficulty of ascertaining actual costs. Notice, para. 9.

of actual agency expenses and application activity to assure that the level of charges remained fair and appropriate.

**III.    The Specific Charges Proposed  
         By the Commission Are Too High**

4.    The Commission proposes to institute a 900 service that will provide bidders with the option of participating in auctions electronically from remote locations. The agency proposes to charge \$4.00 per minute for this service, a figure derived from comparisons to the on-line reference and research services provided by WestLaw and Lexis. AirTouch does not believe these other commercial services are appropriate benchmarks for the per minute 900 service on-line access fee. Both the nature of the product<sup>3/</sup> and the nature of the customer base<sup>4/</sup> are vastly different for WestLaw and Nexis than they are for the specialized service the FCC proposes to provide. There simply is no basis for concluding that these distinct commercial services provide an appropriate frame of reference for establishing a "market" price.

5.    AirTouch notes that the \$4.00 per minute charge compares unfavorably to the \$23.00 per hour on-line access charge previously imposed by Business Information Network ("BIN"), the prior auction contractor. While the Commission claims that the on-line time for its service will be "considerably less" than was

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<sup>3/</sup>    Westlaw and Nexis have huge ongoing database updating obligations as they add innumerable new decisions and documents to their libraries on a continuous basis.

<sup>4/</sup>    WestLaw and Lexis have a large potential client base as compared to the niche audience for the FCC auction service.

experienced under the prior arrangement<sup>5/</sup>, this claim is not fully explained or quantified. As such, it is difficult to evaluate the contention that this factor supports the reasonableness of the \$4.00 per minute fee.

6. AirTouch notes that many providers of public access to the internet currently offer unlimited free access for a monthly fee of \$19.95 to \$29.95 with a local telephone number. AirTouch believes that the access to the Commission's auction system is not significantly different than public access to the internet. In each case, the provider is allowing a user to gain access to an information pool of information not owned or generated by the access provider. Furthermore, like the providers of public access to the internet, once the Commission establishes the modem pool, that modem pool can be reused for each subsequent auction; therefore, a charge which recoups the cost of the modems and line installation charges over the projected life of the equipment would be appropriate.<sup>6/</sup>

7. As an alternative to an access fee, the Commission could charge solely on a per minute basis. Based upon AirTouch's understanding of the cost of securing 900 telephone service from a long-distance telephone carrier, it would appear that a per

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<sup>5/</sup> Notice, para 10.

<sup>6/</sup> Of course, a bidder would still be required to pay for any toll charges it incurs, but the extent of those charges would be controlled by the bidder in locating its bidding center. If the Commission wanted to provide toll-free access as well, it could charge a small per minute charge equal to the toll-charges it incurs from the interexchange carrier -- no more than \$0.10-\$0.15 per minute.

minute charge of from \$.15 to \$.20 would recoup the Commission's costs of the 900 service and provide the Commission with a contribution toward the expenses incurred in developing its on-line service. AirTouch urges the Commission, if it is determined to proceed with component charges, to consider fees in this range.

8. AirTouch also believes that the proposed charge for the Remote Access Bidding Software is too high. The \$200 fee previously charged by BIN for the auction software package included a profit margin, and no doubt reflected the fact that BIN had no assurance of follow-on contracts. The FCC should charge less because it should break even, not profit, and will have multiple auctions to recover its costs. A lower charge also is suggested if the Commission is looking to the commercial marketplace for price comparisons. A variety of interactive software is available, much of which is targeted to a narrow class of potential users, in the \$39 to \$69 price range.<sup>2/</sup> AirTouch recommends that the Commission look to these "comparables" to come up with its "market" price.

**IV. The Bidder's Information Package Should  
be Made Available Without Charge**

9. AirTouch Paging submits that charging for the Bidders Information Packet is inappropriate. Having reserved to

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<sup>2/</sup> Many commercial terminal packages market for this range, such as Procomm, Telix, and Crosstalk. Many other packages are available as shareware. In addition, SLIP and PPP access to the internet can be done with shareware software which requires a minimal fee.

itself the right to fine tune the auction process on the eve of each auction, the Commission should be obligated to make the information packet available free of charge, just as it does the daily releases. Also, the Commission should be encouraging the greatest possible dissemination of the bidding information to encourage participation in the auction by all interested parties.

10. Finally, policing the "one per person or entity", will be difficult. For example, AirTouch notes that it has in the past secured its bidder's packages from its outside FCC regulatory counsel. The extent to which outside consultants would be in a position to offer this information on a timely and convenient basis could be compromised by the proposal to charge for multiple copies of the packet.

11. These outside parties serve the public interest and offer the Commission a very valuable service. First, they minimize the amount of Commission resources that must be dedicated to providing this information to the public. Second, they ensure that the applications are in compliance with the Rules and that the bidders are qualified. If the Commission makes these outside consultants pay for the package, they will be forced to charge their clients for the package plus the administrative cost. None of this would serve the public interest.

#### **CONCLUSION**

No single component of the proposed charges is likely to have a significant financial impact on any particular bidder.

Nevertheless, given that auctions will be a major component of the Commercial Mobile Radio Service business in the future, AirTouch does not think the Commission should lock in the initial fees at too high a level. The Commission should revisit its proposal taking into consideration the foregoing comments.

Respectfully Submitted

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May 31, 1995

CERTIFICATE OF SERVICE

I, Jacqueline S. Ashton, hereby certify that I have, on this 31st day of May, 1995, caused copies of the foregoing Comments of AirTouch Paging to be delivered by hand to the following:

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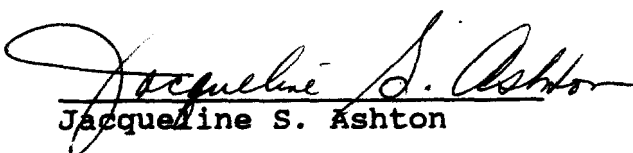
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